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09/767,819	01/22/2001	Robert M. Zeidman	ZEID-02	9823
65069	7590	11/13/2007		
ROBERT MARC ZEIDMAN 15565 SWISS CREEK LANE CUPERTINO, CA 95014			EXAMINER BELIVEAU, SCOTT E	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 11/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/767,819

Applicant(s)

ZEIDMAN, ROBERT M.

Examiner

Scott Beliveau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Matheny et al. fails to teach or suggest the limitation of operating 'without requiring viewer action'. Applicants reason that since Matheny doesn't store in its database viewer identities that have not provided viewer feedback through an 'action' the reference teaches away from operating 'without requiring viewer action'. Turning to the instant application, applicant's note that support is found in Paragraph [0020] of the instant application. This passage appears directed to the system automatically sending information stored on its database regarding the programming that the viewer watched. By applicant's reasoning, the claims would likewise not be enabled since the applicant's system in fact still requires some sort of viewer action (e.x. watching the program, changing the channel, turning the television on, etc.) in order to populate the database. Consistent with the specification, it is the examiner's position, however, that the claims are in fact not precluding the requirement of any/all viewer action from ever taking place. Rather, the claims merely require that the particular step of 'sending' itself (i.e. connecting and distributing embedded information) is what is being performed without requiring user action (e.x. The user themselves are not required to dial the number of the remote server). As noted, the prior rejection the cited passages of Matheny disclose the automatic sending of embedded information as claimed.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the 1997 Broadcast of "Schindler's List" on NBC, in view of Matheny et al. (US Pat No 6,766,524), and in further view of Blackketter et al. (US Pat No. 7,103,904).

In regard to claim 1, the 'You Should Know Better, Mr. Spielberg' article provides evidence that it is known in the art of television broadcasting to "allow content to be broadcast without commercial interruption" yet still be sponsored by companies. However, the evidence of the particular species of 'broadcast programming' is silent with respect further providing incentives to viewers to watch.

In an analogous art pertaining to the field of television, Matheny et al. discloses a system and method to encourage viewers to pay attention to television programs (Col 2, Lines 38-42). The method comprises "receiving a broadcast with embedded information about the broadcast" (i.e. information associated with the received triggers)" whereupon "said embedded information [is] provided to allow construction of a viewing record of the broadcast" [271]. The system "extracts and displays content from said broadcast" including content such as broadcast programs, Internet data, etc. (Figure 2; Col 2, Lines 38-55) and further "extract[s]" and "stor[es] said embedded information" derived from the VBI of said broadcast (Col 4, Lines 28-36). The viewer is subsequently enabled to participate or be

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rewarded for paying attention to the programming by answering specific questions such as those asking the user to identify the name of a 'sponsor' of the program (Col 2, Lines 5-7 and 56-65). "At a predetermined time and without requiring viewer action, [the system] send[s] said stored embedded information and viewer information to a remote computer to allow said remote computer to construct said viewing record" (Col 3, Lines 46-66). As noted by Matheny et al., the sending itself is an automatic process that is performed on a periodic basis in association with pushing the log information [271] irrespective of any user activity and without the user needing to actuate the communication. Finally, the system "provides specific incentives" or rewards to the "viewer based on said viewing record including information indicative of one or more sponsors of the broadcast" (Col 2, Lines 5-7; Col 3, Lines 46-50; Col 4, Lines 14-21). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Matheny et al. with other types of programming including "broadcasts without commercial interruption" for the purpose of providing a means to encourage viewers to pay attention to TV programs.

It is unclear from Matheny et al. whether or not the "embedded information includes information indicative of one or more sponsors of the broadcast" such as a sponsor name. Matheny et al. explicitly incorporates by reference US application serial No. 09/345,223 (now US Pat No. 7,103,904)(Col 5, Lines 20-25). Blackketter et al., in conjunction with its usage of advertising templates teaches that it is known in the art for "embedded information" such as triggers to "include information indicative of one or more sponsors of the broadcast" such as the sponsor name (Col 3, Lines 25-30; Col 5, Lines 13-15). Accordingly, it would

have been obvious to one having ordinary skill in the art at the time the invention was made to modify Matheny et al. using the teachings of Blackketter et al. for the purpose of providing for customization of interactive content in a manner that conserves bandwidth (Blackketter et al.: Col 3, Lines 7-16).

In regard to claim 2, the 'You Should Know Better, Mr. Spielberg' article provides evidence that it is known in the art of television broadcasting to "allow content to be broadcast without commercial interruption" yet still be sponsored by companies. However, the evidence of the particular species of 'broadcast programming' is silent with respect further providing incentives to viewers to watch.

In an analogous art pertaining to the field of television, Methany et al. discloses a system and method to encourage viewers to pay attention to television programs. The claimed step of "receiving a broadcast with information about the broadcast embedded into the broadcast at regular time periods, said information including timestamp each identifying the time slice during which the broadcast is received" is met by Figures 2-3.

"Reward notice 260 and reward query 275 are conveyed in trigger messages, or "triggers," broadcast to receivers of broadcast video. Such triggers generally instruct receivers to take a specific action to synchronize the content of a Web page with a broadcast television program. Reward notices and reward queries may be transmitted in the VBI of a broadcast video signal. The text service channels of line 21 of the VBI provide a robust communication medium, albeit at relatively low bandwidth" (Col 4, Lines 28-36).

"[E]ach trigger includes a time stamp. Thus, the time attribute of the selected reward notice 260 can be used to determine the point at which the viewer tuned into the commercial" (Col 7, Lines 28-30).

The claimed step of "extracting and displaying content from said broadcast" is met by Figure 2.

"Receiver 215 includes a television set 235 connected via a video line 240 to a set-top box 245 similar to set-top box 110 of FIG. 1. Television set 235 and set-top box 245 work together to display Web pages, broadcast television, or both. Web pages are typically downloaded over the Internet 230, but may also be received from video signal 210 or retrieved from a local memory, such as a disk drive 250 in set-top box 245. Set-top box 245 stores Web pages locally in each case" (Col 2, Lines 48-55).

"FIG. 2 illustrates a communication system 200 that enables television sponsors to reward viewers for paying attention to broadcast television commercials and other types of broadcast programs" (Col 2, Lines 39-42).

Figure 2 meets the claimed step of "extracting said embedded information from said broadcast". As detailed in Col 4, Lines 28-36, the embedded information is extracted from the VBI. Figures 2-4 meet the claimed step of "incrementing counters for counting time slices during which broadcasting is received".

"[E]ach trigger includes a time stamp. Thus, the time attribute of the selected reward notice 260 can be used to determine the point at which the viewer tuned into the commercial" (Col 7, Lines 28-30). "Returning to the example of FIG. 2, if a viewer answers question 269, then set-top box 245 notes the identity of the program in which the question appeared, the time the question was posed, a value expressing how much of the program was viewed, and the viewer's answer to the query" (Col 3, Lines 46-50).

The claimed steps of "storing said embedded information" and "sending said embedded information, said counter values and viewer information to a remote computer to allow a viewing time to be determined, said sending not requiring viewer action" are met by Figures 2 and 4.

"Returning to the example of FIG. 2, if a viewer answers question 269, then set-top box 245 notes the identity of the program in which the question appeared, the time the question was posed, a value expressing how much of the program was viewed, and the viewer's answer to the query. Set-top box 245 then stores this information in a local log file 271 on disk drive 250. In other embodiments, set-top box 245 collects

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different types of information to identify whether viewers respond to selected programs when prompted.

The contents of log file 271 are eventually pushed to remote information store 220. In one embodiment, set-top box 245 periodically establishes network connection 225 to accomplish this push. In one embodiment, set-top box 245 automatically establishes connection 225 daily to retrieve updated programming information, and set-top box pushes the contents of log file 271 to information store 220 while connected" (Col 3, Lines 46-66)."

The claimed step of "providing specific incentives to the viewer based on said embedded information including information indicative of one or more sponsors of the broadcast and said viewing time" is met by Figure 2-4.

"A sponsor of a TV commercial might ask, for example, that the viewer identify the name of the sponsor to the color of an announcer's shirt" (Col 2, Lines 5-7).

"Returning to the example of FIG. 2, if a viewer answers question 269, then the set-top box 245 notes the identity of the program in which the question appear, the time the question was posed, a value expressing how much of the program was viewed, and the viewer's answer to the query" (Col 3, Lines 46-50).

"The message that includes unique identifier 275 notifies information store 220 that the viewer associated with receiver 215 has answered a query, and may therefore be entitled to a reward. Information store 220 determines, based on the information identifying the program, whether the viewer provided the correct answer. If so, then information store 220 allocates the appropriate reward to the viewer" (Col 4, Lines 14-21).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Matheny et al. with other types of programming including "broadcasts without commercial interruption" for the purpose of providing a means to encourage viewers to pay attention to TV programs.

It is unclear from Matheny et al. whether or not the "embedded information includes information indicative of one or more sponsors of the broadcast" such as a sponsor name.

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Matheny et al. explicitly incorporates by reference US application serial No. 09/345,223 (now US Pat No. 7,103,904)(Col 5, Lines 20-25). Blackketter et al., in conjunction with its usage of advertising templates teaches that it is known in the art for "embedded information" such as triggers to "include information indicative of one or more sponsors of the broadcast" such as the sponsor name (Col 3, Lines 25-30; Col 5, Lines 13-15). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Matheny et al. using the teachings of Blackketter et al. for the purpose of providing for customization of interactive content in a manner that conserves bandwidth (Blackketter et al.: Col 3, Lines 7-16).

In regard to claim 3, the 'You Should Know Better, Mr. Spielberg' article provides evidence that it is known in the art of television broadcasting to "allow content to be broadcast without commercial interruption" yet still be sponsored by companies. However, the evidence of the particular species of 'broadcast programming' is silent with respect further providing incentives to viewers to watch.

In an analogous art pertaining to the field of television, Methany et al. discloses a system and method to encourage viewers to pay attention to television programs. The claimed steps of "embedding information along with the broadcast content, said embedded information including information that allows a viewing time of said broadcast content to be determined" and "broadcasting said content with said embedded information to a remote viewer of the content, the embedded information enabling a remote computer to retain the viewing time, information indicative of one or more sponsors of the broadcast, and viewer information

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without requiring viewer action" are met by Figures 3 and 4. The remote computer is 'enabled to retain' by virtue of having received the information autonomously.

"Reward notice 260 and reward query 275 are conveyed in trigger messages, or "triggers," broadcast to receivers of broadcast video. Such triggers generally instruct receivers to take a specific action to synchronize the content of a Web page with a broadcast television program. Reward notices and reward queries may be transmitted in the VBI of a broadcast video signal. The text service channels of line 21 of the VBI provide a robust communication medium, albeit at relatively low bandwidth" (Col 4, Lines 28-36).

"Receiver 215 includes a television set 235 connected via a video line 240 to a set-top box 245 similar to set-top box 110 of FIG. 1. Television set 235 and set-top box 245 work together to display Web pages, broadcast television, or both. Web pages are typically downloaded over the Internet 230, but may also be received from video signal 210 or retrieved from a local memory, such as a disk drive 250 in set-top box 245. Set-top box 245 stores Web pages locally in each case" (Col 2, Lines 48-55).

"FIG. 2 illustrates a communication system 200 that enables television sponsors to reward viewers for paying attention to broadcast television commercials and other types of broadcast programs" (Col 2, Lines 39-42).

"A sponsor of a TV commercial might ask, for example, that the viewer identify the name of the sponsor to the color of an announcer's shirt" (Col 2, Lines 5-7).

"Returning to the example of FIG. 2, if a viewer answers question 269, then set-top box 245 notes the identity of the program in which the question appeared, the time the question was posed, a value expressing how much of the program was viewed, and the viewer's answer to the query. Set-top box 245 then stores this information in a local log file 271 on disk drive 250. In other embodiments, set-top box 245 collects different types of information to identify whether viewers respond to selected programs when prompted. The contents of log file 271 are eventually pushed to remote information store 220. In one embodiment, set-top box 245 periodically establishes network connection 225 to accomplish this push... In one embodiment, set-top box 245 automatically establishes connection 225 daily to retrieve updated

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programming information, and set-top box pushes the contents of log file 271 to information store 220 while connected" (Col 3, Lines 46-66)."

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Methany et al. with other types of programming including "content without commercial interruption" for the purpose of providing a means to encourage viewers to pay attention to TV programs.

It is unclear from Matheny et al. whether or not the "embedded information includes information indicative of one or more sponsors of the broadcast" such as a sponsor name. Matheny et al. explicitly incorporates by reference US application serial No. 09/345,223 (now US Pat No. 7,103,904)(Col 5, Lines 20-25). Blackketter et al., in conjunction with its usage of advertising templates teaches that it is known in the art for "embedded information" such as triggers to "include information indicative of one or more sponsors of the broadcast" such as the sponsor name (Col 3, Lines 25-30; Col 5, Lines 13-15). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Matheny et al. using the teachings of Blackketter et al. for the purpose of providing for customization of interactive content in a manner that conserves bandwidth (Blackketter et al.: Col 3, Lines 7-16).

In regard to claim 4, the claimed step of "obtaining stored embedded information without requiring viewer action so as to determine said viewing time" is met by Figures 2-4.

"Returning to the example of FIG. 2, if a viewer answers question 269, then set-top box 245 notes the identity of the program in which the question appeared, the time the question was posed, a value expressing how much of the program was viewed, and the viewer's answer to the query. Set-top box 245 then stores this information in a local log file 271 on disk drive 250. In other embodiments, set-top box 245 collects

different types of information to identify whether viewers respond to selected programs when prompted. The contents of log file 271 are eventually pushed to remote information store 220. In one embodiment, set-top box 245 periodically establishes network connection 225 to accomplish this push. In one embodiment, set-top box 245 automatically establishes connection 225 daily to retrieve updated programming information, and set-top box pushes the contents of log file 271 to information store 220 while connected" (Col 3, Lines 46-66).

The claimed step of "sending specific incentives to said viewer based on said viewing time" is met by Figures 2-4.

"The message that includes unique identifier 275 notifies information store 220 that the viewer associated with receiver 215 has answered a query, and may therefore be entitled to a reward. Information store 220 determines, based on the information identifying the program, whether the viewer provided the correct answer. If so, then information store 220 allocates the appropriate reward to the viewer" (Col 4, Lines 14-21).

Claims 5-6 and 7-8 are met by that discussed above for claims 2-4.

In regard to claims 9-10, the recited limitations are met by that discussed above for claims 2-4 except the reference fails to explicitly disclose creating a Web page containing links to all sponsor incentive websites and to specific incentives and sending said Web page back to said viewer; however, the applicant's admission of fact provides evidence that it notoriously well know in the art to use a web page so as to facilitate the organization of URLs. Consequently, it would have been obvious to one of ordinary skill in the art to implement Matheny with the use a web page so as to facilitate the organization of URLs.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343. The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



SEB

November 9, 2007

Scott Beliveau  
Primary Examiner  
Art Unit 2623